

**Remarks**

Applicant respectfully requests reconsideration.

Claims 3 and 100-102 are amended. Support for the amendment of claims 3 and 101 can be found in the specification at least on page 45 lines 19-24. Support for the amendment of claim 100 can be found in the specification at least on page 10 lines 24-25.

New claims 103-105 have been added. Support for new claim 103 can be found in the specification at least on page 3 lines 10-11. Support for new claim 104 can be found in the specification at least on page 4 lines 5-6. Support for new claim 105 can be found in the specification at least on page 3 line 12 and page 45 lines 19-24.

No new matter has been added.

Claims 1-5, 8-15, 19-21, 23, 28-33, 44, 46-58, 64-66, 71-74, 77-81, 84, 85, 89, 90, 95, 96, 98 and 100-105 are pending. Claims 5, 13, 15, 46-58, 64-66, 71-74, 77-81, 84, 85, 89, 90, 95, 96 and 98 are currently withdrawn. Claims 1-4, 8-12, 14, 19-21, 23, 28-33, 44 and 100-105 are under consideration.

***Double Patenting Rejection***

Claims 1, 3, 8-10, 17, 18, 20, 21, 23 and 30-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 41-46, 52-56 and 58 of co-pending Application No. 10/816,220 (2004/0076905). Without conceding the Examiner's position, Applicant defers substantive rebuttal until the cited claims are allowed.

***Rejection under 35 U.S.C. §102***

Claim 102 is rejected under 35 U.S.C. §102(a) as being anticipated by Olek *et al.* (WO 2002/18632 or WO 2001/92565).

The Examiner states that the Olek *et al.* references disclose sequences (SEQ ID NOs: 4789, 4790, 19850, 19849 and 5396 from WO 2002/18632 and SEQ ID NO: 244 from WO 2001/92565) comprising Applicant's SEQ ID NO:1. In the interest of expediting prosecution, Applicant has amended claim 102 to depend from claim 100, which was not anticipated by the cited references. Claim 102 as amended therefore is also not anticipated by the references.

Reconsideration and withdrawal of the rejection is respectfully requested.

***Rejection under 35 U.S.C. §112***

Claims 1-4, 8-12, 14, 19-21, 23, 29-33, 44 and 100-102 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Specifically, the Examiner questions whether the claims embrace immunostimulatory nucleic acids that are plasmids or vectors. One of ordinary skill in the art would not regard the immunostimulatory nucleic acid of claim 1, which comprises a phosphorothioate backbone modification, as embracing a plasmid or a vector. Applicant is not aware of any published report of a plasmid having a phosphorothioate backbone modification. The immunostimulatory nucleic acid of claim 100 is 24-100 nucleotides in length, and therefore it also does not embrace a plasmid or vector, regardless of the use of “comprising” as the transitional term. The immunostimulatory nucleic acid of claim 101 may be a plasmid or a vector.

The Examiner further questions whether the antigen of claims 3, 4, 8 and 101 is encoded by the immunostimulatory nucleic acid. Claims 3 and 101 (and claims 4 and 8 dependent thereon) are amended to recite that the antigen is not a nucleic acid vector that encodes the antigen. Support for these amendments can be found in the specification at least on page 45 lines 19-24. Examples of antigens as claimed can be found on page 28 lines 15-22. These amendments are also consistent with the Restriction Requirement Group election in this case.

Reconsideration and withdrawal of the rejection is respectfully requested.

***Withdrawal of Previous Rejections***

Applicant acknowledges the withdrawal of all other previous rejections.

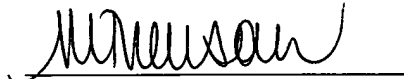
**Conclusion**

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, which is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

If the Examiner has any questions and believes that a telephone conference with Applicant's representative would prove helpful in expediting the prosecution of this application, the Examiner is urged to call the undersigned at (617) 646-8266.

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Respectfully submitted,



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